

§410.27

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the services of an employee of the other employer.

(5) *Noninstitutional setting* means all settings other than a hospital or skilled nursing facility.

(6) *Practitioner* means a non-physician practitioner who is authorized by the Act to receive payment for services incident to his or her own services.

(7) *Services and supplies* means any services or supplies (including drugs or biologicals that are not usually self-administered) that are included in section 1861(s)(2)(A) of the Act and are not specifically listed in the Act as a separate benefit included in the Medicare program.

(b) Medicare Part B pays for services and supplies incident to the service of a physician (or other practitioner).

(1) Services and supplies must be furnished in a noninstitutional setting to noninstitutional patients.

(2) Services and supplies must be an integral, though incidental, part of the service of a physician (or other practitioner) in the course of diagnosis or treatment of an injury or illness.

(3) Services and supplies must be commonly furnished without charge or included in the bill of a physician (or other practitioner).

(4) Services and supplies must be of a type that are commonly furnished in the office or clinic of a physician (or other practitioner).

(5) Services and supplies must be furnished under the direct supervision of the physician (or other practitioner). The physician (or other practitioner) directly supervising the auxiliary personnel need not be the same physician (or other practitioner) upon whose professional service the incident to service is based.

(6) Services and supplies must be furnished by the physician, practitioner with an incident to benefit, or auxiliary personnel.

(7) Services and supplies must be furnished in accordance with applicable State law.

(8) A physician (or other practitioner) may be an employee or an independent contractor.

(9) Claims for drugs payable administered by a physician as defined in section 1861(r) of the Social Security Act to refill an implanted item of DME

may only be paid under Part B to the physician as a drug incident to a physician's service under section 1861(s)(2)(A). These drugs are not payable to a pharmacy/supplier as DME under section 1861(s)(6) of the Act.

(c) *Limitations.* (1) Drugs and biologicals are also subject to the limitations specified in §410.29.

(2) Physical therapy, occupational therapy and speech-language pathology services provided incident to a physician's professional services are subject to the provisions established in §§410.59(a)(3)(iii), 410.60(a)(3)(iii), and 410.62(a)(3)(ii).

[51 FR 41339, Nov. 14, 1986, as amended at 66 FR 55328, Nov. 1, 2001; 67 FR 20684, Apr. 26, 2002; 69 FR 66421, Nov. 15, 2004; 77 FR 69361, Nov. 16, 2012; 78 FR 74811, Dec. 10, 2013]

§410.27 Therapeutic outpatient hospital or CAH services and supplies incident to a physician's or non-physician practitioner's service: Conditions.

(a) Medicare Part B pays for therapeutic hospital or CAH services and supplies furnished incident to a physician's or nonphysician practitioner's service, which are defined as all services and supplies furnished to hospital or CAH outpatients that are not diagnostic services and that aid the physician or nonphysician practitioner in the treatment of the patient, including drugs and biologicals which are not usually self-administered, if—

(1) They are furnished—

(i) By or under arrangements made by the participating hospital or CAH, except in the case of a SNF resident as provided in §411.15(p) of this subchapter;

(ii) As an integral although incidental part of a physician's or nonphysician practitioner's services;

(iii) In the hospital or CAH or in a department of the hospital or CAH, as defined in §413.65 of this subchapter;

(iv) Under the direct supervision (or other level of supervision as specified by CMS for the particular service) of a physician or a nonphysician practitioner as specified in paragraph (g) of this section, subject to the following requirements:

(A) For services furnished in the hospital or CAH, or in an outpatient department of the hospital or CAH, both on and off-campus, as defined in § 413.65 of this subchapter, “direct supervision” means that the physician or nonphysician practitioner must be immediately available to furnish assistance and direction throughout the performance of the procedure. It does not mean that the physician or nonphysician practitioner must be present in the room when the procedure is performed;

(B) Certain therapeutic services and supplies may be assigned either general supervision or personal supervision. When such assignment is made, *general supervision* means the definition specified at § 410.32(b)(3)(i), and *personal supervision* means the definition specified at § 410.32(b)(3)(iii);

(C) Nonphysician practitioners may provide the required supervision of services that they may personally furnish in accordance with State law and all additional requirements, including those specified in §§ 410.71, 410.73, 410.74, 410.75, 410.76, and 410.77;

(D) For pulmonary rehabilitation, cardiac rehabilitation, and intensive cardiac rehabilitation services, direct supervision must be furnished by a doctor of medicine or a doctor of osteopathy, as specified in §§ 410.47 and 410.49, respectively; and

(E) For *nonsurgical extended duration therapeutic services (extended duration services)*, which are hospital or CAH outpatient therapeutic services that can last a significant period of time, have a substantial monitoring component that is typically performed by auxiliary personnel, have a low risk of requiring the physician’s or appropriate nonphysician practitioner’s immediate availability after the initiation of the service, and are not primarily surgical in nature, Medicare requires a minimum of direct supervision during the initiation of the service which may be followed by general supervision at the discretion of the supervising physician or the appropriate nonphysician practitioner. *Initiation* means the beginning portion of the nonsurgical extended duration therapeutic service which ends when the patient is stable and the supervising phy-

sician or the appropriate nonphysician practitioner determines that the remainder of the service can be delivered safely under general supervision; and

(v) In accordance with applicable State law.

(2) In the case of partial hospitalization services, also meet the conditions of paragraph (e) of this section.

(b) Drugs and biologicals are also subject to the limitations specified in § 410.129.

(c) Rules on emergency services furnished to outpatients by nonparticipating hospitals are specified in subpart G of Part 424 of this chapter.

(d) Rules on emergency services furnished to outpatients in a foreign country are specified in subpart H of Part 424 of this chapter.

(e) Medicare Part B pays for partial hospitalization services if they are—

(1) Prescribed by a physician who certifies and recertifies the need for the services in accordance with subpart B of part 424 of this chapter; and

(2) Furnished under a plan of treatment as required under subpart B of part 424 of this chapter.

(f) Services furnished by an entity other than the hospital are subject to the limitations specified in § 410.42(a).

(g) For purposes of this section, “nonphysician practitioner” means a clinical psychologist, licensed clinical social worker, physician assistant, nurse practitioner, clinical nurse specialist, or certified nurse-midwife.

[76 FR 74580, Nov. 30, 2011, as amended at 78 FR 75196, Dec. 10, 2013]

§ 410.28 Hospital or CAH diagnostic services furnished to outpatients: Conditions.

(a) Medicare Part B pays for hospital or CAH diagnostic services furnished to outpatients, including drugs and biologicals required in the performance of the services (even if those drugs or biologicals are self-administered), if those services meet the following conditions:

(1) They are furnished by or under arrangements made by a participating hospital or participating CAH, except in the case of an SNF resident as provided in § 411.15(p) of this chapter.

(2) They are ordinarily furnished by, or under arrangements made by, the